

**ST 98-36**

**Tax Type: SALES TAX**

**Issue: Organizational Exemption From Use Tax (Charitable)**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**COALITION,**

**APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No: 97-ST-0123**

**Sales Tax Exemption**

**Robert C. Rymek  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Robert E. Johnson on behalf of Coalition; Gary Stutland appeared on behalf of the Illinois Department of Revenue.

**SYNOPSIS:** On March 7, 1997, COALITION (hereinafter the “applicant”) sent the Illinois Department of Revenue (hereinafter the “Department”) a letter requesting renewal of its sales tax exemption identification number. On May 21, 1997, the Department tentatively denied applicant’s request. Applicant protested the Department’s denial and requested a hearing.

The sole issue to be determined at the hearing was whether applicant qualifies for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable \*\*\* purposes[.]” 35 ILCS 105/3- 5(4); 35 ILCS 120/2-5(11). Following a careful review of all the evidence presented at the hearing, I recommend that the Department’s tentative denial of

exemption be reversed and that the applicant be issued a sales tax exemption identification number.

### **FINDINGS OF FACT**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's May 21, 1997, Tentative Denial of Exemption. Department Ex. No. 1.
2. Applicant was incorporated as a not-for-profit corporation on October 24, 1984. App. Gr. Ex. No. 3.
3. The applicant's amended Articles of Incorporation provide that the applicant was organized generally for charitable and educational purposes. App. Gr. Ex. No. 3.
4. The applicant's amended articles of incorporation provide that the applicant was organized for the specific purposes of "improv[ing] the quality of life for the residents of the Community through improving community relations; working to ensure quality education and housing; economic development and other community development activities." App. Gr. Ex. No. 3.
5. The Community is primarily located within the borders of. Tr. p. 31.
6. The applicant's bylaws have membership provisions that do not have any financial or residency requirements. Under the bylaws, the main prerequisite for active membership is that the member must attend one-half of the organizations meetings. App. Gr. Ex. No. 4.
7. The applicant's brochure sets forth that the applicant's mission "is to significantly enhance the economic and social well-being of our community (the Greater area of Chicago's far south side)." App. Gr. Ex. No. 1.

8. Although the applicant's brochure sets forth a list of membership fees (App. Gr. Ex. No. 1) the applicant never actually collects membership fees (Tr. pp. 9-10, 32) and derives no income from membership fees (App. Gr. Ex. No. 2).
9. The applicant has a total of 150 members who volunteer to help the applicant. Tr. pp. 9-11.
10. The applicant provides services to anyone regardless of membership. Tr. pp. 10-11, 58.
11. The applicant provides services to approximately 1,400 people each year. Of those people, approximately 900 resided outside the community. Tr. p. 11.
12. The applicant's brochure sets forth that the applicant is involved with a variety of programs and services including:
  - (a) employment assistance;
  - (b) legal assistance;
  - (c) housing;
  - (d) senior citizens programs;
  - (e) prevention services;
  - (f) economic development; and
  - (g) volunteer programs.

App. Gr. Ex. No. 1.

13. Significant portions of the applicant's activities involve directing individuals to other organizations, which then provide the services the individual is seeking. Tr. pp. 44-45; 49-51.
14. Applicant's employment assistance services include job workshops and referrals. When the applicant engages in these activities by itself, the programs are limited

- to the community. However, when these activities are offered in partnership with various large corporations, such as IBM and Panasonic, these activities are not restricted to the community. Tr. p. 21.
15. The applicant is only indirectly involved in legal services by providing the Chicago Legal Clinic and the Legal Assistance Foundation with space to use. Tr. p. 22.
16. The applicant's involvement in housing activities is more direct and includes:
- (a) providing Department of Housing and Urban Development (hereinafter "HUD") counseling to individuals from a service area ranging from Skokie to Joliet;
  - (b) helping package loans by entering into joint ventures with banks to help people obtain loans in neighborhoods in which financing was difficult to obtain (the applicant does not provide any of the funding for these loans);
  - (c) targeting abandoned houses owned by HUD or the Federal Housing Authority, rehabilitating those houses, and selling them for a profit which is not distributed to members; and
  - (d) working with churches and other organizations to improve the community with regard to gang crime, infrastructure, façade, and abandoned property.
- Tr. pp. 23-25, 36, 40, 55-56.
17. The applicant, to an unspecified extent, provides free housing to individuals. Tr. pp. 64-65.

18. Applicant's prevention services include a community policing program and youth drug and gang awareness programs, which are not limited to Coalition members. Tr. p. 26.
19. The applicant's economic development program involves giving technical assistance to area businesses and efforts to bring businesses to the area. Tr. pp. 42-43.
20. The applicant's economic development program is open to anyone, but restricted to developing the area. Tr. p. 26.
21. Little information was presented regarding the applicant's volunteer program apart from the fact that the volunteers were non-paid. Tr. p. 26.
22. Little information was presented regarding the applicant's senior citizen programs apart from the phrases "Reverse Equity Mortgage" & "Senior Services and Events" which are listed below "Senior Citizen Programs" on the applicant's brochure. App. Gr. Ex. No. 1.
23. The housing program is the applicant's most important and active component. Tr. p. 50.
24. The applicant's annual income is approximately \$180,000 and its annual expenses approximately \$190,000. App. Gr. Ex. No. 2.
25. Over 70% of applicant's income comes from government grants. Approximately 8% comes from private grants and 20% from real estate sales and rentals. App. Gr. Ex. No. 2.
26. The applicant's primary expense is salaries totaling \$145,000 per year. These salaries account for approximately 70% of applicant's total expenses and are apportioned among the Executive Director, Executive Housing Director,

Economic Development Director, and an Educational Specialist Director. App. Gr. Ex. No. 2; Tr. p. 34.

27. The applicant's remaining expenses consist of normal operating expenses such as utilities, postage, insurance, etc. None of these other expenses individually accounts for more than 5% of applicant's total annual expenses. App. Gr. Ex. No. 2.

### **CONCLUSIONS OF LAW**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

Here, the applicant seeks to qualify for an exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable \*\*\* purposes[.]" 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11).<sup>1</sup> The taxpayer bears the burden of proving, by "clear and convincing" evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of the exemptions "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

The applicant's amended articles of incorporation provide, *inter alia*, that the applicant was organized for charitable purposes. However, merely because an

organization's governing legal documents set forth that it is organized for charitable purposes does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth a number of factors which may be considered in assessing whether an organization actually operates as for charitable purposes. These factors include whether the applicant: (1) earns no profits or dividends and instead derives its funds mainly from public and private charity; (2) dispenses charity to all who need and apply for it; (3) does not provide gain or profit in a private sense to any person connected with it; and, (4) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. *Id.* at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the public interest and lessens the burdens of government. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Applying the guidelines from Methodist Old People's Home, I find that the applicant has presented adequate evidence to establish that the applicant operates exclusively for charitable purposes.

First, the fact that the applicant "derives its funds mainly from public and private charity" is established by evidence that over 70% of applicant's income comes from public grants and another 8% comes from private grants. App. Gr. Ex. No. 2. Although the applicant does derive limited revenue from rental income and the sale of rehabilitated homes, such revenue is incidental and is not used for personal benefit but instead to

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<sup>1</sup> The word "exclusively" when used in exemption statutes means "primary." Gas

support the applicant's beneficent activities, such as providing free housing to needy individuals. App. Gr. Ex. No. 2; Tr. pp. 64-65.

Second, the fact that the applicant "dispenses charity to all who need and apply for it," is shown by the fact that the applicant's services are open to the general public without charge. Tr. pp. 10-11, 58. Moreover, although some of the applicant's activities are limited to the area, the majority of the people to whom the applicant rendered services resided outside the community. Tr. pp. 11, 21, 23, 26.

Third, applicant's activities do not "provide gain or profit in a private sense to any person connected with it." Although the organization's Directors are paid for their work, such salaries average under \$40,000 per year and do not appear to be so high that the Directors could be considered the primary beneficiaries of applicant's activities. See Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 662 (1<sup>st</sup> Dist. 1992).

Fourth, the applicant does not charge membership fees or otherwise limit to whom it provides services. Tr. pp. 9-11, 26, 58. Thus, the applicant "does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses."

In conclusion, it is true that the applicant does not generally provide any direct financial assistance to individuals. However, charity is more than just merely direct financial assistance. Rather, "charity is a gift to be applied \*\*\* for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare – or in some way reducing the burdens of government." Methodist Old People's Home *supra* at 156-157. The services the applicant provides to

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Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1987).



people facing housing, employment, and other problems are clearly designed to help improve the general welfare of those in need. Moreover, the applicant: (1) offers its services to anyone who applies; (2) does not charge for its services; (3) does not realize any profit or private gain from its services; and (4) derives its funding primarily from public and private donations. Under these circumstances, the applicant qualifies for a sales tax exemption identification number.

WHEREFORE, for the reasons set forth above, I recommend that the Department grant the applicant a sales tax exemption identification number.

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Date

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Robert C. Rymek  
Administrative Law Judge